

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS - CRIMINAL TERM: PART: 1

3 - - - - - X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

IND. NO.  
3464/2006

6 GENERAL WAITERS,

7 Defendant.

8 - - - - - X

9 320 Jay Street  
10 Brooklyn, New York 11201

11 May 28, 2014

12

13 B E F O R E:

14 HONORABLE DEBORAH DOWLING,  
Justice

15 A P P E A R A N C E S:

16

17 CHARLES J. HYNES, ESQ  
DISTRICT ATTORNEY - KINGS COUNTY  
350 Jay Street  
18 Brooklyn, New York 11201  
BY: MARK HALE, ESQ.  
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For the People

20

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23 New York, New York

24 Jennifer Sampugnaro, RPR

25 Senior Court Reporter

## Proceedings

1 THE CLERK: This is number two on the calendar,  
2 People of the State of New York against General Waiters.  
3 The defendant is present. Counsel, note your appearances  
4 for the record.

5 MR. FARRELL: For Mr. Waiters, Gary Farrell, 305  
6 Broadway, New York, New York. Good morning.

7 MR. HALE: Mark Hale for the People.

8 MS. GROB: Rhea Grob, G-R-O-B.

9 THE COURT: This matter is on for hearing.  
10 Mr. Farrell, are you ready to proceed?

11 MR. FARRELL: Yes, Judge.

12 THE COURT: Just so the record is complete,  
13 certainly when the hearing was last on, Mr. Simons did in  
14 fact appear, albeit late, but he did come in and indicated  
15 that he should be here today as well.

16 MR. FARRELL: Yes, Judge, he has checked in. He  
17 said he would be in Part 85, but I am prepared to go  
18 forward now with another witness. I plan to call two  
19 witnesses, Judge. That's all. I have a few exhibits. I  
20 have given copies to the prosecution and I don't think --  
21 I think we will be able to conclude today easily. At  
22 least the defense case.

23 Judge, at this time the People call Dr. Richard  
24 Stripp who is in conference room G, to the left.

25 MR. HALE: The People call?

Dr. Stripp - Defense - Direct

1 MR. FARRELL: Did I say People? Defendant

2 Waiters calls Dr. Richard Stripp.

3 R I C H A R D S T R I P P, M. D., called as a witness on  
4 behalf of the Defense, being first duly sworn, was examined and  
5 testified as follows:

6 THE CLERK: In a loud, clear voice, please state  
7 for the record your full name.

8 THE WITNESS: Richard Stripp, S-T-R-I-P-P.

9 THE COURT: Good morning, Mr. Stripp. I am  
10 going to ask that you please keep your voice up. You need  
11 to speak loud enough so that we can hear your answers.

12 Mr. Stripp, if any of the attorneys ask you a  
13 question and you are not quite sure what they are asking  
14 you, I don't want you to guess. If the question isn't  
15 clear to you, you will let the attorneys know. They will  
16 then reask you the question in such a way that you should  
17 then be able to understand the question, and you will then  
18 answer it.

19 And finally, Mr. Stripp, if you hear any of the  
20 attorneys object to any question, do not answer that  
21 question until after I have instructed you as to whether  
22 you may answer that particular question. Is that  
23 understood by you, Mr. Stripp?

24 THE WITNESS: Yes.

25 THE COURT: You may inquire.

Dr. Stripp - Defense - Direct

1 MR. FARRELL: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. FARRELL:

4 Q Sir, could you tell us your occupation?

5 A I am a toxicologist.

6 Q And how long have you been so employed as a  
7 toxicologist?

8 A For 31 years.

9 Q Could you tell us briefly your duties and  
10 responsibilities as a toxicologist?

11 A I serve as the chief science and technical  
12 toxicologist at Sterling Health Care Services which is a  
13 national toxicology enterprise. I also hold a tenured faculty  
14 position at The City University of New York at John Jay  
15 College.

16 Q Doctor, could you briefly tell us your educational  
17 background?

18 A I have a doctorate from St. John's University School  
19 of Pharmacy and Allied Health Professions with specialization  
20 in pharmacology and toxicology.

21 THE COURT: Dr. Stripp, you will have to slow  
22 down a little so we can hear your answers completely and  
23 so the reporter can hear you.

24 THE WITNESS: Okay.

25 A Specialization in pharmacology and toxicology. I

JS

Dr. Stripp - Defense - Direct

1 also have a Masters degree in toxicology from same institution,  
2 as well as Bachelor's degree in toxicology from the same  
3 institution.

4 Q You used the term now toxicology several times.  
5 Could you briefly tell us what that is?

6 A Toxicology is adverse effects of drugs and chemicals  
7 on man.

8 Q What does the term forensic toxicology mean?

9 A Forensic toxicology is the application of toxicology  
10 to legal principles and legal -- in legal aspects.

11 Q Does our state, New York State, require any special  
12 certification to be a toxicologist?

13 A Yes. In order to serve as toxicologist, direct  
14 toxicology laboratories, you have to have a certificate of  
15 qualification from the New York State Department of Health.

16 Q Do you have such a certificate?

17 A I do.

18 Q How long have you had it?

19 A Several years. I'm not quite sure when it was first  
20 issued. It is in forensic and clinical toxicology.

21 Q I think you started to tell us, but didn't really get  
22 through it. What you do -- well, you mentioned you are now the  
23 chief scientific and technical officer at Sterling Health Care  
24 Services; correct?

25 A Correct.

JS

Dr. Stripp - Defense - Direct

1 Q How many employees does that company have?

2 A Approximately 500.

3 Q And what is the main things the company does?

4 A It's basically a toxicology company that does drug  
5 testing for both clinical and forensic purposes. We do drug  
6 monitoring for clinical applications. We also do criminal  
7 justice testing. Again, it is testing for drugs of abuse,  
8 therapeutic drugs and so forth in biological laboratories.

9 Q Before getting involved as the chief scientific and  
10 technical officer of that company, what was your prior  
11 position, your prior job?

12 A I was the founder of American Forensic Toxicology  
13 Services. And, again, I was one of the principal owners and  
14 also the director of that particular laboratory.

15 Q Did it work in a similar matter to the company now or  
16 are there any differences that you can tell us about?

17 A No, basically it was similar. It was forensic and  
18 clinical comprehensive toxicology laboratory here in New York.

19 Q Prior to that -- by the way, take us through the  
20 years that you worked presently through your company and the  
21 company that preceded that?

22 A The present company is -- I have been with them -- I  
23 am on my second year now. Prior to that, from 2009 until that  
24 point I was with AFTS labs. And then AFTS or American Forensic  
25 Toxicology Services was acquired by Sterling Health Care.

JS

Dr. Stripp - Defense - Direct

1 Q And, Doctor, I believe you told us, how many  
2 different colleges are you a faculty member of? Where do you  
3 teach?

4 A Again, I have a tenured position at City University  
5 of New York. And I am also visiting associate professor at  
6 Saint Johns College of Pharmacy and Health Professions.

7 Q Did you ever work for the Department of Homeland  
8 Security?

9 A Yes. Well, I worked for federal research laboratory  
10 which is now part of the Homeland Security Department for nine  
11 years.

12 Q Did you ever work for the New York City Office of the  
13 Chief Medical Examiner?

14 A I did.

15 Q Could you tell us when that was and what your duties  
16 and responsibilities were?

17 A Again, that was in the early '80s and my duties and  
18 responsibilities were in the toxicology department where we  
19 tested specimens collected at autopsy for the presence or  
20 absence of drugs, chemicals, alcohol and that sort of thing.

21 Q Doctor, have you ever written any professional  
22 articles in your field, specifically relating to alcohol and  
23 intoxication?

24 A I have. I have written a book chapter in textbook  
25 called Forensic Chemistry. And I have also written peer review

Dr. Stripp - Defense - Direct

1 journal articles relating to the measurement and effects of  
2 alcohol.

3 Q Are you a member of a variety of toxicology  
4 organizations and forensic toxicology organizations?

5 A Yes.

6 Q How do you keep current in your field?

7 A Attendance at national meetings. Taking extra credit  
8 courses. Those sorts of things.

9 Q Dr. Stripp, have you previously been qualified as an  
10 expert in the fields of toxicology and forensic toxicology in  
11 courts of this state?

12 A Yes.

13 Q What courts have you been so qualified in?

14 A I believe all of them.

15 Q Meaning Kings County Supreme Court which you are at  
16 today?

17 A Yes.

18 Q And some of the other New York City courts such as  
19 New York County and Queens County?

20 A Yes.

21 Q Nassau and Suffolk?

22 A Correct.

23 Q Approximately how many times have you been so  
24 qualified as an expert witness in toxicology and forensic  
25 toxicology?

JS



Dr. Stripp - Defense - Direct

1           A     Well, I have opined on hundreds of cases. I have  
2 testified a few dozen times.

3           Q     Have you ever been qualified as an expert on behalf  
4 of any D.A.'s offices?

5           A     I have worked as a consultant for D.A. offices as  
6 well, yes.

7           Q     Have you ever been denied, to your knowledge, being  
8 accepted as an expert in your fields of toxicology and forensic  
9 toxicology?

10          A     I never have.

11                   MR. FARRELL: At this time I offer Dr. Stripp as  
12 an expert in the areas of toxicology and forensic  
13 toxicology.

14                   THE COURT: Any objection?

15                   MR. HALE: No objection.

16                   THE COURT: The witness will be qualified as an  
17 expert in toxicology and forensic toxicology.

18                   MR. FARRELL: Thank you, Your Honor.

19           Q     Dr. Stripp, at my request, did you have occasion to  
20 review records from Kings County Hospital of the defendant  
21 General Waiters from May 7th, 2006 to May 17th, 2006?

22          A     I did.

23                   MR. FARRELL: Your Honor, I would ask these be  
24 deem marked Defendant's Exhibit 1 for purposes of the  
25 hearing or Defendant's Exhibit A, and shown to the

Dr. Stripp - Defense - Direct

1 witness.

2 THE COURT: That will be deemed marked as A for  
3 the purposes of the hearing.

4 MR. HALE: I have a copy, Your Honor. I have no  
5 objection.

6 MR. FARRELL: Thank you very much, Mr. Hale. I  
7 appreciate Mr. Hale's concession on that. I would ask  
8 they be admitted as Defendant's Exhibit A in evidence.

9 THE COURT: It will be admitted as Defendant's  
10 Exhibit A in evidence.

11 Q Dr. Stripp, I am going to approach the monitor here  
12 to help us. But while I do that and get some records ready for  
13 you to talk about, generally, could you tell the Court, what do  
14 those records show regarding the blood alcohol level of General  
15 Waiters when he was admitted to Kings County Hospital back on  
16 May 7th of 2006?

17 A At approximately 12:30, a blood alcohol test was done  
18 at Kings County Hospital. The result of that test was  
19 386 milligrams per deciliter. It is likely that was done at  
20 serum rather than in whole blood.

21 Q What is the significance of that?

22 A Serum has concentration that is about ten to  
23 fifteen percent higher than whole blood. So it would be  
24 slightly less if you converted to whole blood equivalent.

25 Q Now, Doctor, I am going to ask you specifically some

JS

Dr. Stripp - Defense - Direct

1 questions about what you just testified to when I get to the  
2 certain pages of the records. But I would like to, in general  
3 terms for a moment, tell the Court what happens to people as  
4 they drink alcohol?

5 A Alcohol is or in this case ethanol alcohol is a  
6 central nervous system depressant. So basically it depresses  
7 the brain function, and it does so in a progressive manner.  
8 And the progression of that depression of brain function  
9 directly correlates to the blood alcohol concentration, in that  
10 as the blood alcohol concentration increases, the depressed and  
11 the effects of alcohol also increases.

12 So with increasing concentrations of alcohol, the  
13 brain function becomes depressed, beginning with some of the  
14 higher brain functions. Things like judgment, reaction times.  
15 There will be subtle changes that would not be obvious to a  
16 layperson that would progress all the way up through depression  
17 of the brain stem and ultimately coma and death. With any  
18 number of different effects between those on motor impairment,  
19 memory, cognitive function and so forth.

20 Q Dr. Stripp, what are some of the factors that  
21 influence the effects of alcohol intoxication on different  
22 people?

23 A Alcohol intoxication results in very significant  
24 individuals variation. For instance, one of the most important  
25 considerations when interpreting a blood alcohol concentration

JS

Dr. Stripp - Defense - Direct

1 is tolerance.

2 Q Could you describe that term, please, as you use it?

3 A Tolerance is basically a reduction in the  
4 effectiveness of a drug on a person who has been using that  
5 drug in high concentrations for prolonged period of time.  
6 Meaning that requires greater amounts of the drug to produce  
7 the same effects.

8 Q How many types of tolerances are there in your field  
9 of toxicology and forensic toxicology?

10 A Well, there are different ways in which tolerance can  
11 develop. With regards to develop, principally there is  
12 something called metabolic tolerance and another called  
13 functional.

14 Q Could you explain the two, metabolic tolerance and  
15 functional tolerance?

16 A Metobolic tolerance occurs when the person actually  
17 becomes capable of metabolizing the alcohol or clearing the  
18 alcohol faster than an average person, with an increasing  
19 dosing of the drug.

20 And functional tolerance is a reduction in the  
21 sensitivity of the person or the cells to the drug or chemical.

22 Q Thank you, Doctor. I am going to show you some  
23 pages. I am going to use -- I have an exact copy of what you  
24 have for convenience.

25 I am going to show you what's been labeled page 98 as

JS

Dr. Stripp - Defense - Direct

1 part of Defendant's Exhibit A. I am just looking for the  
2 height and weight of Mr. Waiters as it is recorded on this  
3 page, Doctor. Do you see it?

4 A Yes.

5 Q Could you tell the Judge what it is, please?

6 A Five feet two inches tall and 130 pounds.

7 Q Do you have --

8 MR. FARRELL: Do you have a laser pointer,  
9 Judge, that you use sometimes?

10 Q Just so you get the hang of it, Doctor, could you  
11 show us where the height and weight are noted.

12 A (Witness complying.)

13 Q So his height is five feet two inches?

14 A Yes, and 130 pounds.

15 Q Now I am going to go to page four, Doctor. It is  
16 noted at the top, New York City 911 system provider ambulance  
17 call report. I am going to direct you to the top third of the  
18 page. There is a notation, ETOH, under the word, the printed  
19 word overdose which is filled in. Could you tell the Judge  
20 what is ETOH an abbreviation for?

21 A It is an abbreviation for ethanol alcohol.

22 Q What is the significance of this abbreviation under  
23 the word overdose?

24 A That would indicate that the emergency personnel  
25 believed this person had experienced a very high intoxicating

Dr. Stripp - Defense - Direct

1 quantity of alcohol.

2 MR. HALE: I am going to object, Your Honor.

3 THE COURT: I am going to overrule it for the  
4 purposes of this hearing, and permit his testimony to  
5 stand.

6 MR. HALE: I mean the testimony is what he  
7 believes that the notation, and what he believes other  
8 people thought. I don't know how he can possibly testify  
9 to that.

10 THE COURT: I will give you an opportunity to  
11 inquire, but for purposes of this hearing, I will permit  
12 the answer to stand.

13 MR. FARRELL: Thank you, Your Honor.

14 Q Showing the witness page five of the records. Looks  
15 like the second page of the call report from EMS, Doctor. Do  
16 you see the notation on the third line here?

17 A It's a little hard to read.

18 Q Maybe check your copy. Page five, the third line  
19 down from treatment response.

20 A Yes.

21 Q Could you read it to us since it is in evidence?  
22 Starting where it says PT.

23 A Verbal and confused ethanol intake. Obvious deep  
24 lacerations.

25 MR. HALE: I'm sorry, you didn't read that

JS

Dr. Stripp - Defense - Direct

1           correctly. You have STS there, states, and a comma.

2                     THE COURT: That will be noted for the record.

3           Just keep your voice up so the reporter can hear you as  
4           well.

5                     Do you see that, Dr. Stripp? The prosecutor is  
6           right.

7           Q     Could you start where it says PT at the left.

8           A     It is a little difficult to read. It looks like it  
9           says PT, and I am not quite sure what the next word is.

10          Q     Do you see the word verbal?

11          A     Verbal and confused. And it appears to be STS  
12          ethanol intake.

13          Q     Do you interpret that as states? That the patient  
14          stated that he was drinking alcohol?

15          A     Correct.

16          Q     Moving on to page six. I direct your attention to  
17          the last line. It says, CNS, unable to assess due to  
18          intoxicated state. Could you tell us what the abbreviation CNS  
19          means?

20          A     Central nervous system.

21          Q     And briefly, I know you mentioned it once already.  
22          Just so it is clear, what is the central nervous system?

23          A     The central nervous system consists of the brain and  
24          the spinal cord.

25          Q     I labeled this as page seven, but it is -- clearly

JS

Dr. Stripp - Defense - Direct

1 the pages are not in chronological order of patient's stay.  
2 But on the date May 14th, which is seven days into his  
3 treatment, there is a notation that reads, patient reportedly  
4 had some hallucinations. Could you read the next sentence,  
5 Doctor? I think it has some drugs there that were --

6 A Was placed back on Librium and Ativan.

7 Q Are you familiar with those drugs?

8 A Yes.

9 Q What are they used for in your experience?

10 A They are anti-anxiety drugs. They are also used for  
11 treatment of alcohol withdrawal and for treatment for  
12 agitation.

13 Q I am going to move up to page 104. There is a  
14 notation under psychosocial history. Recent ETOH unknown. How  
15 do you interpret that, Doctor?

16 A Can you repeat that?

17 Q Yes. Do you see this notation here. Do you have any  
18 opinion on that?

19 A I mean it would state that they are not clear on the  
20 intake of ethanol.

21 Q The next page, page 105 where it says head, ears,  
22 nose and throat. There is a notation under it, AOB. What is  
23 that abbreviation mean?

24 A Alcohol on breath.

25 Q Doctor, on page 106 there are some notations here.

JS



Dr. Stripp - Defense - Direct

1 It seems to be handwritten notations. Did you have occasion to  
2 review these before?

3 A Yes.

4 Q What do they mean?

5 A This particular notation indicates that they did a  
6 urine tox screen which was negative. And in this case the  
7 alcohol is less than 15.

8 Q Is that -- does there indicate a time as to when that  
9 was done?

10 A I don't see the time.

11 Q Because you indicated earlier that you thought that  
12 the reading was initially -- there was a reading at 12:30?

13 A Correct.

14 Q Maybe I will go right to that on pages -- starting on  
15 page 118 and I guess I should go right to page 119. Down  
16 almost to the bottom of the page.

17 Doctor, is there a reading there that you mentioned  
18 at the beginning of your testimony when I asked you in general  
19 terms about the intoxication level of General Waiters on May  
20 7th?

21 A Yes, it says ethanol alcohol, 386 milligrams per  
22 deciliter. 386.24.

23 Q That is taken at -- does it tell us the time that  
24 that reading was taken?

25 A At 12:33.

JS

Dr. Stripp - Defense - Direct

1 Q Now, there are some other notations on this page I  
2 would like to ask you about. These notations, ALT and AST, can  
3 you tell the Court what is that short for?

4 A Those are liver function tests. Aminotransferases  
5 enzymes.

6 Q And in the parentheses there is a number 94 next to  
7 the ALT. And in parentheses there is an ABN. What is that an  
8 abbreviation for?

9 A Abnormal.

10 Q And for the AST there is a notation 190 and likewise,  
11 parentheses. Would you also agree that is also abnormal?

12 A Yes.

13 Q Is that consistent with excessive alcohol intake,  
14 those readings?

15 A Those could be markers of that, yes.

16 Q And did you say those two things, what do they  
17 measure regarding the liver?

18 A They are liver function tests.

19 Q Doctor, would you describe this blood alcohol level  
20 as it's evinced here on what I deem to be page 119, would you  
21 describe it as extreme alcohol?

22 A It is significantly elevated blood alcohol level. It  
23 is actually approaching the level wherein an average person you  
24 could even see fatality.

25 Q Doctor, in the parentheses next to that actual

Dr. Stripp - Defense - Direct

1 reading, there is an abbreviated CRIT. Could you tell us what  
2 that means?

3 A Critical.

4 Q Doctor, could you tell us how many times over the  
5 legal limit for blood alcohol for the impaired in the State of  
6 New York, how many times over was Mr. Waiters impaired?

7 MR. HALE: For driving?

8 Q For driving, thank you.

9 A For driving it would be 80.

10 Q You mean .08?

11 A 80 milligrams per deciliter, which is .08. So it is  
12 roughly four and a half times.

13 Q Dr. Stripp, what is the concept, the term  
14 extrapolation in your field mean?

15 A Extrapolation is a term that indicates an estimate of  
16 the blood alcohol concentration at some point in time, prior to  
17 the provision of a sample.

18 Q And you told us this sample was taken at  
19 approximately 12:33 p.m.?

20 A Correct.

21 Q Would you have an opinion as to if Mr. Waiters' blood  
22 alcohol would have been higher an hour before, which is  
23 approximately the time of the incident?

24 A It could have been slightly higher, but it also could  
25 have been at that level or even slightly lower. It really

JS

Dr. Stripp - Defense - Direct

1 depends upon his drinking pattern on the day in question.

2 Q Could you explain that a little more, please?

3 A It would depend upon whether he's absorptive or post  
4 absorptive. Meaning if he still had alcohol in his GI track.  
5 What had not been absorbed as of yet, that alcohol would  
6 attribute to the blood alcohol that was collected an hour  
7 later.

8 Q In your opinion, how long before he was taken away in  
9 the ambulance would he have had to have had a drink in order  
10 for that to be possible, that it would still be in his  
11 digestive track?

12 A Depends on the presence of food and few other  
13 factors. It is difficult to say. Typically, to be  
14 conservative, we can presume that there was one alcoholic  
15 beverage, standard alcoholic beverage that would be unabsorbed,  
16 which would contribute to the blood alcohol. But then you had  
17 an hour of metabolism. So they kind of cancel each other out.

18 The best estimate is it would have been approximately  
19 close to the same number.

20 Q As the prosecutor rightly pointed out, you are not a  
21 medical doctor, but in general what was the main thing, the  
22 physical injury, the traumatic injury?

23 A He had an orbital fracture.

24 Q Which is?

25 A A fracture of the cheek bone.

JS

Dr. Stripp - Defense - Direct

1 Q Is there any notations that you noted that before  
2 12:33, that the defendant had been given IV fluid?

3 A I did not notice that, no.

4 Q You didn't see any --

5 A I didn't take note of it.

6 Q If IV fluid were in any way given, could that have  
7 any impact on the blood alcohol level?

8 A Yes.

9 Q What would that impact potentially be?

10 A If he was administered IV fluids or transfusion or  
11 anything like that, it would tend to dilute the blood alcohol  
12 level.

13 Q Meaning it would have actually been higher?

14 A It would have been higher at the time.

15 Q Doctor, I am going to go now to page 189. This is  
16 several days after the incident. It says the patient was  
17 asleep but easily arousable. He is disoriented to place,  
18 parentheses Woodhole Hospital, and did not know the year, but  
19 knew it was the 21st Century. He also thought that he had been  
20 at his sister's house down south yesterday. Then it used some  
21 medical terms, Doctor, I am going to ask you to define.

22 Do you know what IMP colon delirium due to medical  
23 etiology and/or ETOH?

24 A That is an indication that the patient was suffering  
25 from alcohol withdrawal and delirium, which is a known

JS

Dr. Stripp - Defense - Direct

1 manifestation from alcohol.

2 Q What is delirium?

3 A Delirium is the person may hallucinate. They  
4 experience various cognitive and hallucinogenic type effects.

5 Q And would you agree that this Dr. Alan Tusher,  
6 T-U-S-H-E-R, and diagnosis said delirium acute?

7 A Correct.

8 Q What does acute mean in medical speak?

9 A Acute means in the near term. So it is happening in  
10 the immediate term.

11 Q And there is another notation for Ativan  
12 two milligrams. That is a drug you have talked about before  
13 that is generally used to do what?

14 A To reduce agitation. And it is also used, again, to  
15 treat patients that are experiencing withdrawal.

16 Q Going back to page 187. Dr. Stripp, there is a  
17 reference to attempted to speak to patient. Patient was only  
18 able to mumble and had difficulty opening his eyes because of  
19 the swelling. Patient believes he is in Atlanta, Georgia, and  
20 was surprised when he was informed that he was in Brooklyn. He  
21 also thinks his wife was with him last night. Patient is still  
22 in delirium.

23 And below it there is a notation, alcohol delirium.  
24 You pretty much explained it, Dr. Stripp. I just want to be  
25 sure, what is your definition of alcohol delirium?

JS

Dr. Stripp - Defense - Direct

1           A     Again, it is the manifestation of delirium related to  
2 alcohol abuse.

3           Q     And what is your definition of alcohol dependence?

4           A     Alcohol dependence is when the person becomes both  
5 physically and psychologically on a drug. And in this case the  
6 drug being alcohol.

7           Q     And Dr. Poberesky, P-O-B-E-R-E-S-K-Y, his diagnosis  
8 was alcoholism, is that fair to say?

9           A     Alcoholism and alcohol dependence are pretty much the  
10 same.

11          Q     Doctor, now I would ask you to, based on your review  
12 of these records and your experience as an expert witness,  
13 could you tell us, in your opinion, what you believe the  
14 pharmacological effects were on General Waiters, based on the  
15 alcohol he consumed, based upon what the records reflect the  
16 alcohol he consumed on May 7th was? What do you believe those  
17 effects were?

18                   MR. HALE: I am going to object.

19                   THE COURT: I will sustain it as to the form of  
20 the question.

21          Q     It wasn't too artfully worded.

22                   Doctor, what do you -- what is your opinion -- let me  
23 withdraw that.

24                   At an alcohol level like this, what are some of the  
25 effects you would expect to see on a person?

Dr. Stripp - Defense - Direct

1 MR. HALE: I'm sorry?

2 THE COURT: Is that an objection?

3 MR. HALE: There is an objection simply because  
4 he has elicited multiple alcohol levels.

5 THE COURT: I will sustain it as to the form if  
6 it was an objection as opposed to your withdrawing it.

7 Q Dr. Stripp, going back to the May 7th, 12:33 p.m.  
8 reading for General Waiters' blood alcohol level. Describe it  
9 again for us, please. What was that?

10 A His blood alcohol was 386 milligrams per deciliter,  
11 which converts to .39 gram percent.

12 Q And, Doctor, based on that read, could you describe  
13 the effects you would expect to see on a person, based on that  
14 level of alcohol in their system?

15 A Again, for the typical person you would expect the  
16 person to be overtly intoxicated. They would be showing signs  
17 of motor impairment. They would have significant cognitive  
18 impairment. Impairment on judgment, emotional instability.

19 You would expect to see effects on reaction time.  
20 Effects that would be approaching potentially even  
21 unconsciousness. The person would experience blackouts. They  
22 would have amnestic effects.

23 And, again, the magnitude of these are all going to  
24 be based upon the person's tolerance. That would be for the  
25 average person.

JS



Dr. Stripp - Defense - Direct

1           A more tolerant person would still experience overt  
2 intoxication, but the actual magnitude of those effects would  
3 be lessened.

4           Q     Dr. Stripp, assume for this hypothetical question,  
5 the following facts. That several witnesses testified that  
6 General Waiters was able to walk, he was able to talk, to the  
7 extent that he was understood. He was able to procure a  
8 handgun and fire it multiple times an hour before those  
9 readings were taken. How do you explain this?

10          A     It's not uncommon for an individual, particularly a  
11 very tolerant drinker to have some level of functioning. But,  
12 again, there is a -- tolerance is not complete. A person can  
13 be tolerant to certain aspects of the drug's effects, but not  
14 all of them. And tolerance is also transient. Meaning that if  
15 the person abstains or something like that and then goes back  
16 to the drug, the effects can be greater.

17               It is not uncommon to have somebody who is in a  
18 functioning state to have a very high blood alcohol level, but  
19 still be showing signs of intoxication. So there would be a  
20 distinct difference between the mental aspects and the physical  
21 aspects.

22               So they may be tolerant to some of the physical  
23 aspects, the slurring of words, motor impairment. They  
24 maintain some level of functioning, but they are still going to  
25 be under the influence of alcohol.

JS

Dr. Stripp - Defense - Direct

1 Q And as you just -- and in your answer that is what I  
2 wanted to key in on. That their mental functioning could be  
3 effected even though their physical functioning not as much.  
4 Is that fair to say?

5 A That's correct.

6 Q You used the word, it is like amnesia, but you said  
7 it differently?

8 A Amnestic.

9 Q What does that mean, amnestic effects?

10 A That means that the person has difficulty recalling  
11 the events as they occur.

12 Q Doctor, is there evidence in those records that  
13 suggest that General Waiters was suffering from mental  
14 impairment at the time of the blood alcohol reading at 12:30?

15 MR. HALE: Objection. That is outside the scope  
16 of his expertise.

17 THE COURT: I will sustain the objection.

18 Q Dr. Stripp, how many drinks, is it your opinion,  
19 Mr. Waiters consumed on the morning of May 7th, 2006?

20 A Based upon his body weight, we can estimate the  
21 minimum amount or approximate minimum amount that he would have  
22 had to consume, just to account for the blood alcohol level  
23 that he had, would also be affected by his drinking pattern.

24 But based upon the fact that he weighs approximately  
25 130 pounds, you could estimate that he would have to have had

JS

Dr. Stripp - Defense - Direct

1 approximately sixteen standard drinks with standard alcohol  
2 beverage, being one ounce of hard liquor, 12 ounce beer or four  
3 to five ounce table wine.

4 Q Doctor, in your review of those records, did you see  
5 that there was three different blood alcohol levels recorded  
6 throughout the records?

7 A Yes.

8 Q And could you tell us the process? In general, how  
9 do people -- I have heard it called metabolize or clear alcohol  
10 from their system. Could you explain that process in general?

11 A Clearance reflects the clearance or removal of  
12 alcohol from the blood and it involves principally metabolism,  
13 but also excretion through the lungs and so forth. But it's  
14 primarily the metabolism of alcohol.

15 Q And how is Mr. Waiters clearing or metabolizing the  
16 alcohol based on the three different readings that you  
17 reviewed?

18 A His clearance was faster than the normal rate. He  
19 was clearing alcohol -- his average alcohol clearance was about  
20 27 milligrams per deciliter, per hour.

21 Q Based upon that, how long, in your opinion, would it  
22 have taken Mr. Waiters to get back under the legal impairment  
23 for driving level of blood alcohol?

24 A About eleven hours.

25 Q Dr. Stripp, assume for purposes of this hypothetical

Dr. Stripp - Defense - Direct

1 question the following fact. That months after this shooting,  
2 General Waiters told forensic psychologist that he was not  
3 drinking at all on the morning of May 7th, 2006. Do you have  
4 an opinion as to whether -- as to the likelihood of that being  
5 a truthful statement?

6 MR. HALE: I am going to object to that.

7 THE COURT: I will sustain it.

8 Q Doctor, in your opinion, was General Waiters  
9 consuming significant quantity, up to and including sixteen  
10 alcoholic drink on the morning of May 7th?

11 A Yes.

12 Q Why do you think that?

13 A It's based upon the blood alcohol readings that were  
14 measured in the hospital.

15 Q What is your definition of hallucinations?

16 A Again, there are different types of hallucinations.  
17 There is auditory hallucinations, there's visual  
18 hallucinations.

19 Again it is when something is being perceived it is  
20 real and it's not. Whether it is hearing things, seeing  
21 things, to that effect.

22 Q Would this blood level alcohol that you saw, meaning  
23 the one at 12:30 p.m., is hallucinations consistent, is that  
24 type of symptom consistent with that blood alcohol level?

25 MR. HALE: Objection.

JS

Dr. Stripp - Defense - Direct

1 MR. FARRELL: I think that is a fair question  
2 within his expertise.

3 THE COURT: Certainly if you are asking him in  
4 his expert opinion.

5 MR. FARRELL: Right. Should I rephrase?

6 THE COURT: Yes.

7 Q Dr. Stripp, in your expert opinion, is the blood  
8 alcohol level that you described at 12:33 p.m., is that  
9 consistent with having a person at that level hallucinating?

10 MR. HALE: I am going to object again. He is  
11 not a medical doctor.

12 THE COURT: I am going to overrule it.

13 A Very high blood alcohol levels can cause a person to  
14 appear to hallucinate, but typically hallucinations in  
15 individuals that have used alcohol are usually more  
16 manifestation of the long-term alcohol abuse.

17 Q And does -- is it fair to say, in your opinion, it  
18 happens during the withdrawal process also, hallucinations?

19 A Yes.

20 Q You saw notations in the records noting  
21 hallucinations by Mr. Waiters; correct?

22 A Yes.

23 Q And last question I believe, Dr. Stripp. Is the  
24 blood alcohol, in your expert opinion, is that blood alcohol  
25 level consistent with amnestic effects or amnesia to the person

Dr. Stripp - Defense - Direct

1 that would consume that type of alcohol, that much alcohol that  
2 day?

3 MR. HALE: Objection.

4 THE COURT: I will overrule it.

5 You can answer.

6 A Yes.

7 Q Why do you say that?

8 A Typically blackout and those types of effects begin  
9 to occur at blood alcohol levels over 0.2. And in this  
10 particular case we are talking about blood alcohol levels that  
11 are approaching .4.

12 Q Doctor, in your long career, what is the highest  
13 blood alcohol level that you have ever seen by somebody that  
14 lived?

15 A The highest that I have ever seen was a .6.

16 Q Could this range, the 12:33 range have caused  
17 fatality?

18 A Yes.

19 MR. FARRELL: Thank you, sir. Nothing further.

20 Could I ask one more question?

21 THE COURT: Certainly.

22 MR. FARRELL: Thank you, very much.

23 Q I think we have covered it, but I think my client  
24 might be right. The term DTs?

25 A Delirium tremens.

JS

Dr. Stripp - Defense - Cross

1 Q What is that?

2 A Alcohol withdrawal.

3 MR. FARRELL: Thank you, very much.

4 THE COURT: Cross examination.

5 MR. HALE: Please.

6 CROSS EXAMINATION

7 BY MR. HALE:

8 Q Doctor, when you are talking about the effects of  
9 alcohol in behavioral aspect, what is the source for that  
10 particular range when you are talking about the various  
11 behavioral aspects?

12 A The actual references?

13 Q Yeah, sure.

14 A I mean there are hundreds of them. I mean basically  
15 it's a well studied field with regards to many of the effects  
16 of alcohol. Classic textbook would be Gerard's textbook or any  
17 number of journals would have hundreds of publications.

18 Q But, again, I think you stated these are wildly or  
19 widely perhaps variant among individuals; is that correct?

20 A That is.

21 Q And there are many factors that may affect those  
22 behavioral changes?

23 A That's correct.

24 Q And you yourself are not a behaviorist in terms of  
25 this? Your expertise would be more in the area of the

JS

## Dr. Stripp - Defense - Cross

1 functioning of the body as opposed to the behavior of the mind;  
2 isn't that correct?

3 A Well, it is related to toxicology. I mean  
4 manifestation of toxic effects can be behavioral as well, but I  
5 am not a behaviorist, no.

6 Q For instance, there is nothing in your science or  
7 nothing in your expertise that could tell when an individual  
8 along the continuum of blood alcohol content losses the ability  
9 to form intent; isn't that correct?

10 A Well, no, because there is significant variation.

11 Q So you have no opinion as to whether Mr. Waiters  
12 could have formed intent; isn't that correct?

13 A I can only opine to the effects of alcohol.

14 Q Well, from the effects of alcohol, is there anyway  
15 that you can say, in your expertise, at what point Mr. Waiters  
16 lost the ability to form intent?

17 A Again, it is limited to the effects on judgment and  
18 cognitive impairment, not necessarily intent.

19 Q Now, you talked extensively about or, I'm sorry, just  
20 to clarify. When Mr. Farrell was asking you about the reports  
21 that refer to the defendant undergoing hallucinations having  
22 delirium tremens, this was all significantly after the  
23 incident; isn't that correct?

24 A Correct.

25 Q In fact we were talking the 14th which is a week and



## Dr. Stripp - Defense - Cross

1 change, eight days after the incident; correct?

2 A That's correct.

3 Q There was nothing in the records that indicated that  
4 he was having hallucinations when he was brought in to the  
5 hospital, was there?

6 A I mean there were references to his cognitive  
7 functioning, yes.

8 Q And I believe that those references were to the  
9 effect of rather than flat statement saying he is intoxicated,  
10 right?

11 A He was not alert to oriented place and so forth, so  
12 he didn't know where he was. And so there were some  
13 indications that his level of intoxication was affecting his  
14 ability to --

15 Q Was that at the intake time or afterward? Again,  
16 when he was talking about that he thought he was in a different  
17 hospital and that he didn't know what year it was, this was on  
18 the 14th, afterward; correct?

19 A Again, I think the assessment of his alertness was at  
20 the time of intake.

21 Q Let me ask you this, sir.

22 At the time of the intake, I mean what was the reason  
23 that Mr. Waiters was being brought to the hospital and being  
24 treated by the emergency medical service and treated at the  
25 hospital? What was the reason for that?

Dr. Stripp - Defense - Cross

1           A     My understanding it was due to his injury to his  
2 facial bones.

3           Q     He had a head injury; is that correct?

4           A     Correct.

5           Q     Would it be fair to say, sir, that some of the  
6 symptomology of what a person may see as intoxication could be  
7 as a result of a head injury?

8           A     May have contributed to it, yes.

9           Q     And perhaps in hypothetical situation if you had a  
10 person who had had a history of having a significant head  
11 injury, say five or six years before, this also could be a  
12 symptom of exacerbation of that particular past head injury;  
13 isn't that correct?

14          A     It's possible.

15          Q     And certainly he had alcohol on his breath, that is  
16 noted in the records. No problem with that, right?

17          A     No.

18          Q     But, again, the opinion, whether it is by the  
19 ambulance service or the attending nurse or the emergency room  
20 doctor, the flat thing saying intoxicated, there could be other  
21 factors that went in to that particular conclusion, that  
22 observation, including the head injury, both past and present;  
23 is that correct?

24          A     It is within the realm of possibility.

25          Q     You talked about tolerance. And let me draw your

## Dr. Stripp - Defense - Cross

1 attention to that. When you are talking about functioning  
2 tolerance, specifically what are you talking about in terms of  
3 individuals? Where does a person become functionally tolerant  
4 while consuming alcohol?

5 A Again, it varies from one person to another. It  
6 basically develops with long standing heavy use to any drug.  
7 So it is not just for alcohol. It is specific to any drug.  
8 Most drugs.

9 Q Let's talk about alcohol. You would agree, sir,  
10 would you not, that the observations when the defendant was  
11 still hospitalized, when Mr. Waiters was still hospitalized;  
12 when he is being treated with the Ativan when he is  
13 hallucinating; when he is having the delirium tremens, that is  
14 indicative of somebody who has a long standing severe alcoholic  
15 problem; isn't that correct?

16 A That is correct.

17 Q That is somebody who might be consuming large  
18 quantities of alcohol on a regular or daily basis?

19 A That's correct.

20 Q Person who does consume alcohol on a regular daily  
21 basis for a number of years generally, again, in your opinion,  
22 would be more tolerant to the acute ingestion of alcohol; isn't  
23 that correct?

24 A That's correct.

25 Q And therefore, those -- that depression of the

Dr. Stripp - Defense - Cross

1 central nervous system that is affected on their behavior and  
2 functioning, it would be somewhat lessened?

3 A That's correct.

4 Q And that would include mental processes such as the  
5 ability to form intent?

6 A It could include that.

7 Q So, sir, in a hypothetical situation, if you had an  
8 indication that a person since the age of eleven had been  
9 abusing alcohol since the age of 11 and was at the time 35 or  
10 so, and had in fact been saying that they had abused hard  
11 alcohol by drinking a fifth of an alcohol beverage, in a  
12 particular case, Rum, on a daily basis, that person, in your  
13 opinion, would be much more tolerant in terms of their behavior  
14 in ingesting alcohol; is that correct?

15 A That's correct. Up to a certain point.

16 Q Well, up to what point, sir?

17 A In a person that is highly abusive of alcohol, there  
18 actually is a point where their tolerance may diminish. They  
19 may go in the other direction where they may become even more  
20 affected by lower levels of alcohol. But in general, your  
21 statement is correct, you would expect that somebody who has a  
22 long history of abusing alcohol, that they would be more  
23 tolerant.

24 Q In fact, what you got from the medical records with  
25 regard to the liver function tests which were abnormal, is not

## Dr. Stripp - Defense - Cross

1 indicative of just a short-term intoxication incident, but it  
2 is indicative of a long term alcohol abuse, is it not?

3 A It could be, yes.

4 Q Well, for instance, if you saw a person who was a  
5 casual drinker who happened to go on a bender one night, you  
6 would not expect to see abnormal liver function, would you?

7 A No.

8 Q You would expect to see that in somebody who is  
9 regularly abusing alcohol over an extended period of time;  
10 correct?

11 A Yes, correct.

12 Q Again, that person -- again, we are talking about on  
13 the continuum of all the variances would normally be more  
14 tolerant in terms of the ingestion of alcohol?

15 A In a general term, that's correct.

16 Q And because there is this variance, you can't say  
17 with specificity with regard to Mr. Waiters, from the records  
18 that you have examined, how tolerant he was?

19 A You cannot estimate what the magnitude of tolerance  
20 would be.

21 Q So you cannot preclude from the levels that were  
22 observed in the medical records, what affect it would have had  
23 on him behaviorally; is that correct?

24 A Well, I can answer that question by qualifying it and  
25 stating that at the blood alcohol level at the time that the

## Dr. Stripp - Defense - Cross

1 sample was collected, even for a highly tolerant drinker, you  
2 would still expect to see overt intoxication because typically  
3 tolerance at the very greatest level might reduce the effects  
4 in half. So you would still see -- you would still expect to  
5 see intoxication.

6 Q Now, sir --

7 A The magnitude would be lessened.

8 Q Fair enough. You have been qualified as a forensic  
9 toxicologist, right?

10 A Yes.

11 Q So I guess the term that we are interested in is not  
12 so much overt intoxication. We are interested in your  
13 opinion as to elements of the crime. You understand what I am  
14 talking about?

15 A Yes.

16 Q Can you say, to a reasonable degree of scientific  
17 certainty, whether the levels that you have seen or the  
18 information that you have in any way could negative an element  
19 of the crime of murder for which this man was convicted?

20 A I can only say that it would affect his functioning  
21 and judgment. Beyond that, I can't say anything else.

22 Q And you as a forensic toxicologist, there is no way  
23 you could say that in terms of negating an element of the crime  
24 of murder?

25 A Correct.

## Dr. Stripp - Defense - Cross

1 Q And specifically when we are talking about intent,  
2 right?

3 A That's correct.

4 Q Just anecdotally, sir. In your studies, you must  
5 have seen people that had very high BAC or blood alcohol  
6 content who formed the intent to buy or pour a drink and put it  
7 to their mouth; correct?

8 A Yes.

9 Q You have seen obviously people with, again, a very  
10 high blood alcohol content who form the intent to get behind  
11 the wheel of a car and turn the key and try to drive the car;  
12 isn't that correct?

13 A Their judgment is bad, but, you know.

14 Q Their judgment is bad, but they are still forming the  
15 intent to do the acts; isn't that correct?

16 A Correct.

17 Q Now, you talked a little bit about amnesic attacks.  
18 I think I said that a little bit better than Mr. Farrell.

19 You said, again, in general terms, you would expect  
20 people with this sort of blood alcohol content and we are  
21 talking about the .39, right?

22 A Correct.

23 Q Just to backtrack a second. I'm sorry. You also  
24 were made reference to and pointed out a .15 that came up from  
25 a urinalysis; is that correct?

Dr. Stripp - Defense - Cross

1           A     No, I believe the .15 was another blood alcohol test  
2     that was done several hours later.

3           Q     Several hours later?

4           A     Yes.

5           Q     You would not have expected I guess given -- well,  
6     there wasn't a notation about what time that was, was there?

7           A     Yes.

8           Q     There was?

9           A     Yes.

10          Q     You wouldn't have expected it to be -- to go from 39  
11     to 15 within the period of time, would you, as a toxicologist?

12          A     Well it was within the range of potential clearance  
13     for somebody who had a very high rate of clearance, yes.

14          Q     I think that you said in order for him to get below  
15     the legal driving limit which is 08, right, it would have taken  
16     eleven hours?

17          A     Approximately.

18          Q     So then a couple hours later you would not have  
19     expected it to be as low as .15, right?

20          A     A couple hours --

21          Q     A couple hours after the 39 to be at 15?

22          A     Again he was eliminating alcohol at a rate of  
23     .027 percent per hour. So I mean if you just -- so how many  
24     hours it would take would be roughly eleven hours to get below  
25     .08.



Dr. Stripp - Defense - Cross

1 Q You said you would expect it to be amnesic effects  
2 with persons who had this sort of blood alcohol level; correct?

3 A Yes.

4 Q Hypothetically, sir, if you were told that within 24  
5 hours in speaking to a police officer, a person with that blood  
6 alcohol level was able to give an account of what had occurred  
7 during the course of a shooting incident, including claiming a  
8 defense to it and giving a, like I said, an account, that  
9 person did not in fact suffer from amnesic effects as a result  
10 of blood alcohol?

11 MR. FARRELL: Objection.

12 THE COURT: I am going to overrule it.

13 A Well, the amnesic effects and blackouts basically  
14 can occur over the course of basically just difficulty  
15 recalling events as they occur. If somebody actually  
16 accurately described the event as it occurred, then you would  
17 be able to say that they were not suffering an amnesic effect  
18 at that point, correct.

19 Q And say the same person a year later, in describing  
20 to two doctors an account that was consistent with that first  
21 account given to police, you would also say that that person,  
22 even with the long term effect of withdrawal and everything  
23 else that went on, still did not suffer from amnesic effects  
24 as a result of the consumption of alcohol?

25 MR. FARRELL: Objection to the form.

JS

Dr. Stripp - Defense - Cross

1 THE COURT: I will sustain it as to the form of  
2 the question.

3 Q Now, you indicated that the depression of the central  
4 nervous system from the consumption of alcohol and the various  
5 effects on it are progressive. That is you can pretty much say  
6 that one comes and then the next would come and on and on as it  
7 goes up the scale; is that correct?

8 A That's correct.

9 Q So, in this particular case, sir, you did have  
10 information that Mr. Waiters was able to perform the physical  
11 functions of having procured a gun, operating that gun,  
12 striking an intended target. That would indicate, would it  
13 not, sir, that he had not reached the level where the motor  
14 impairment was significant; is that correct?

15 A Well, I mean he could have had motor impairment and  
16 still picked up a gun and fired it. I mean, again, the level  
17 of functioning --

18 Q Well, if not motor impairment, not motor prevention,  
19 let's put it that way?

20 A He wasn't unconscious, let's put it that way.

21 Q He could perform the physical acts?

22 A Yes.

23 Q And with significant enough coordination that he was  
24 able to accomplish the intended purpose?

25 A Correct.

## Dr. Stripp - Defense - Cross

1           Q     So, again, the more complex things that you talk  
2 about in terms of having amnesia, blackout, those would have  
3 come somewhere after the significant impairment of motor  
4 function, isn't that correct, if it is progressive?

5           A     Well, again, not necessarily because it's similar --  
6 I mean basically we often describe it as, you know, somebody  
7 goes to holiday party and they do something that they regret  
8 the next day. They may have some memory of it. They actually  
9 perform a certain act or do something that is regrettable, but  
10 they actually are capable of functioning and doing it.

11                     So it doesn't necessarily mean that they -- it is not  
12 progressive to the point where he can fire a gun and then  
13 several hours later he is going to have a blackout. It doesn't  
14 work that way, no.

15           Q     Now, sir, when you were asked by Mr. Farrell about  
16 how many drinks were consumed by Mr. Waiters during the course  
17 of the morning before the assault, and before he was tested and  
18 you opined as to how many. I think you said sixteen; is that  
19 correct?

20           A     Approximately.

21           Q     What if, sir, you had information that his drinking  
22 was not confined to just that morning? And I know that is sort  
23 of amorphous period, but had continued from the previous  
24 afternoon for a number of hours with a break of several, no  
25 more than four hours of sleep. Would that change your opinion

Dr. Stripp - Defense - Cross

1 as to what amount of consumption had been done during the  
2 morning before the assault?

3 A I stated that it was a minimum of sixteen drinks to  
4 achieve the blood alcohol. So if he had been drinking over a  
5 long period of time, the drinking pattern also becomes a  
6 consideration. Meaning that he would have had to have more  
7 than sixteen drinks.

8 Q Yes, but not during the morning. We are talking over  
9 the course of say 12 hours or so?

10 A It is a balance of the rate that the alcohol is being  
11 eliminated versus the rate that the alcohol is being absorbed.  
12 So if he is eliminating approximately say one drink per hour,  
13 then for every hour that he consumes alcohol, you have to kind  
14 of add one more drink.

15 So just to account for the alcohol in his blood at  
16 the time that it was collected, he needed a minimum of sixteen.  
17 If you are going to say he was drinking over a ten hour period,  
18 it could be as high as, you know, 25.

19 Q Over a ten hour period though?

20 A Right.

21 Q And, again, the drinking over an extended period of  
22 time, sir, would it not have less of an effect in terms of what  
23 you call over intoxication as opposed to achieving that  
24 particular blood alcohol level within a concentrated period of  
25 time, as suggested by Mr. Farrell's question?

## Dr. Stripp - Defense - Cross

1           A     I am not quite sure I understand your question.

2           Q     Sure. Mr. Farrell asked you a question, how many  
3     drinks would he have had to have during the morning of the  
4     incident? And, again, that wasn't definite in terms of exactly  
5     how much time. And you said, well, you would have to have at  
6     least sixteen and that would make him overtly intoxicated.

7                     My question is, sir, if in fact the actual period of  
8     drinking had been not the morning, whatever that is, three or  
9     four hours as opposed to say ten or twelve hours, does that  
10    have an affect on your opinion as to one, how many drinks he  
11    consumed and, two, the level of his overt intoxication?

12          A     If he had been drinking over ten or twelve hours then  
13    I would be of the opinion that he drank more than sixteen  
14    drinks. But it wouldn't change my opinion of the effects of  
15    alcohol because the effects of alcohol would be related to the  
16    blood alcohol level at the time that the event occurred.

17                    So, regardless of whether it took him ten hours to  
18    get there or two hours to get there, there are some subtle  
19    differences with regards to whether this person is actually on  
20    the up swing or down swing. But it is not going to change my  
21    opinion as to what the effects of alcohol would be at the time.

22          Q     Bottom line, he was drunk, right?

23          A     Definitely.

24          Q     Also bottom line, you can't say whether his level of  
25    intoxication negated an element of the crime of murder?

Dr. Stripp - Defense - Redirect

1           A       Again, the limitations of my opinion are based upon  
2       the pharmacological effects to cognitive function and judgment,  
3       but not to his intent.

4                       THE COURT:   So the answer is no?

5                       THE WITNESS:  No.

6                       MR. HALE:   Thank you, sir.  Nothing further.

7                       MR. FARRELL: Redirect, Your Honor?

8                       THE COURT:  Certainly.

9       REDIRECT EXAMINATION

10      BY MR. FARRELL:

11           Q       Doctor, at one point during your answers to  
12       Mr. Hale's questions on issue of tolerance, you say well  
13       tolerance may go in the other direction.  Do you remember  
14       saying that?

15           A       Yes.

16           Q       What does that mean?

17           A       Some individuals that abuse alcohol over very long  
18       period of time actually lose their tolerance to the extent that  
19       they actually become more sensitive.

20           Q       And that would mean what?

21           A       That would mean that the effects of alcohol would be  
22       seen as being even greater in those individuals because of  
23       physical effects related to their ability to clear the drug and  
24       so forth.

25           Q       Now, Mr. Hale asked many questions about whether or

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1 not you could say, based on your expertise, what, if any,  
2 effect this blood alcohol level had on Mr. Waiters' intent. He  
3 asked you that, right?

4 A Correct.

5 Q You are not saying that -- well, withdraw that.

6 Is a person -- would you agree with this, that there  
7 can be a disconnect between the degree of visible physical  
8 impairment and the degree of mental impairment, vis-a-vis  
9 alcohol and the tolerance of alcohol?

10 A Yes.

11 Q Explain that again, please.

12 A Well, for instance, a person does not necessarily  
13 have to be visibly intoxicated or show physical signs of  
14 intoxication to be impaired or intoxicated. It is the same  
15 idea that, you know, with regards to testing somebody who has  
16 been drinking whether they are impaired to the extent that they  
17 can drive a car. They may appear fine, but through subtle  
18 tests and so forth they may not be.

19 So the actual effects on a person's behavior or their  
20 cognitive function is usually seen before you actually even see  
21 those physical effects.

22 Q And tell us again about some of the mental -- the  
23 effects that level of alcohol can have on someone's cognitive  
24 functioning?

25 MR. HALE: It is improper redirect. That's

JS

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1 already asked and answered.

2 THE COURT: I am going to overrule it.

3 You can answer.

4 A Again, the effects of alcohol at that level on  
5 cognitive function would be related to things like loss of  
6 inhibitions, impaired judgment, risk taking behavior, those  
7 sorts of things.

8 Q And confusion, would you agree?

9 A Mental confusion, mental clouding.

10 Q And being in a state -- if someone is in a state of  
11 alcoholic delirium, what does that mean?

12 A That means that they are, again, suffering the  
13 effects of alcohol withdrawal and they tend to have mental  
14 manifestations of mental effects.

15 Q Can you manifest those effects while you are in the  
16 midst of drinking? You don't have to wait until you stop  
17 drinking to be in alcohol delirium, do you?

18 A Typically it is on abstinence when you experience  
19 those type of effects. However, alcoholism and chronic  
20 alcoholics suffer certain neurological damage that can occur  
21 over long standing drinking.

22 Q Mr. Hale asked you about the fact that Mr. Waiters  
23 was really there because of the physical trauma to his head,  
24 right? That is what he was being treated for and that is  
25 essentially true; correct?

JS



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1 A Yes.

2 Q But when he asked you questions about whether or not  
3 there was anything -- well, let me just look at page six again.  
4 Let me have you look at page six of these records. This is  
5 from the date of admission, May 7th, 2006. Looking at this  
6 second line here, it is kind of tough to read. Can you see  
7 intraorbital region plus LOC. Do you know what that stands  
8 for?

9 A I am not quite certain.

10 MR. HALE: I will concede what it means.

11 Q Loss of consciousness?

12 A Fine, yes.

13 Q Plus AOB?

14 A Alcohol on breath.

15 Q And it says patient oriented times one. What does  
16 that mean?

17 A That is an indication that the patient was not  
18 oriented to their time and place.

19 Q Meaning he didn't know the time and he didn't know  
20 where he was?

21 A Correct.

22 Q And down here again, unable to assess the central  
23 nervous system. Unable to assess not due to trauma to the  
24 head, but it states due to intoxicated state; correct?

25 A Correct.

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1 MR. FARRELL: Thank you, Doctor, I have nothing  
2 further.

3 THE COURT: Any recross, Mr. Hale?

4 MR. HALE: No, thank you.

5 THE COURT: Thank you. You may step down and  
6 step out of the courtroom. Certainly the exhibit that is  
7 in evidence, you will leave that with the court officer.

8 (Whereupon the witness exits the courtroom.)

9 MR. FARRELL: Judge, I just need to check if  
10 Mr. Simons is outside. I am ready to proceed. I know he  
11 had some cases in the building. If I could take a minute.

12 THE COURT: Certainly.

13 MR. FARRELL: Thank you. I am sorry, he is not  
14 outside. If Mr. Winiker could call Part 85. That is  
15 where he told me he would be if he was not outside.

16 If you think it is prudent for Mr. Winiker to  
17 give him a message to be here at 2:00 or 2:15, Judge.

18 THE COURT: Let's see if he is available at  
19 2:15.

20 So we will see the parties at 2:15. He said he  
21 can be available then.

22 MR. HALE: I can be back this afternoon, but it  
23 will be difficult. I am just considering whether we can  
24 do this another day. I do have some other commitments.  
25 And forgive me, I was under the assumption that we would

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1 be able to finish this morning. And frankly if Mr. Sims  
2 was here, we could have finished this morning. I will  
3 leave it up to the Court.

4 THE COURT: Let me say this. That if in fact I  
5 can call again, which will be the third call, if he is  
6 available tomorrow then maybe we can pick it up tomorrow.

7 MR. FARRELL: That is all right with us.

8 MR. HALE: That would work better for me, Judge.  
9 Thank you.

10 THE COURT: You are probably looking at 11:30  
11 start time, 11:00, around in there.

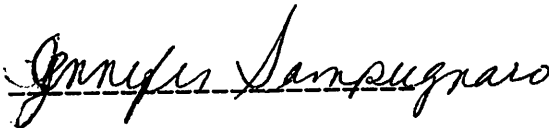
12 Okay, so then we will pick it up tomorrow which  
13 is the 29th at 11:30.

14 MR. HALE: Thank you for that courtesy, Your  
15 Honor. I appreciate it.

16 MR. FARRELL: Thank you, Your Honor.

17 \* \* \* \* \*

18 Certified to be a true and accurate transcript of the foregoing  
19 proceedings.

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21 

22 JENNIFER SAMPUGNARO, RPR

23 OFFICIAL COURT REPORTER  
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